

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALONZO MORRIS, JR.,	§
	§ No. 215, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 9911000751
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 27, 2006

Decided: April 13, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 13th day of April 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Alonzo Morris, Jr., filed an appeal from the Superior Court's April 27, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In November 2002, Morris, on retrial, was found guilty by a Superior Court jury of Assault in the First Degree and Possession of a

Deadly Weapon During the Commission of a Felony.¹ Morris' convictions and sentences were affirmed by this Court on direct appeal.²

(3) In this appeal, Morris claims that his trial counsel provided ineffective assistance by failing to: a) move to suppress his statement to police on the ground that there was no probable cause for his arrest; b) properly investigate the State's use of false evidence to obtain an indictment; c) present evidence that his counsel in his first trial improperly failed to move for a mistrial on the ground of prosecutorial misconduct; d) object to the State's use of improperly suggestive techniques to elicit his in-court identification; e) object to improper jury instructions; f) object to testimony by the State's expert regarding the results of fingerprint testing; and g) object to false testimony by an eye doctor regarding the victim's visual acuity. Finally, Morris claims that his trial counsel was ineffective due to a conflict of interest.

(4) In order to prevail on his claims of ineffective assistance of counsel, Morris must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of

¹ Morris' original convictions were reversed by this Court in *Morris v. State*, 795 A.2d 653 (Del. 2002).

² *Morris v. State*, Del. Supr., No. 21, 2003, C.J., Steele (Mar. 3, 2004).

the proceedings would have been different.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”⁴ This Court consistently has held that a defendant must set forth concrete allegations of actual prejudice and substantiate them, or risk summary dismissal.⁵

(5) Morris’ first claim is that his counsel was ineffective by failing to move to suppress his statement to police on the ground that there was no probable cause for his arrest. At trial, two eyewitnesses, including the victim of the assault, identified Morris as the perpetrator. In addition, two other witnesses confirmed the victim’s identification of Morris as the perpetrator immediately following the attack. In light of the overwhelming evidence against Morris, we conclude that there is no reasonable probability that the outcome of the trial would have been any different had his statement to police been suppressed.

(6) Morris next claims that his counsel was ineffective by failing to demonstrate that the State had relied on a false affidavit of probable cause and false testimony about a photo lineup to obtain his indictment. The

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁵ *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

record reflects that, at an evidentiary hearing prior to Morris' second trial, a police officer who had testified before the grand jury stated that he mistakenly assumed Morris had appeared in a photo lineup shown to witnesses. At the close of the evidentiary hearing, however, the trial judge ruled that the grand jury had not heard any evidence concerning a photo lineup. The judge also ruled that, while the affidavit of probable cause contained an error regarding Morris' name, the error was minor and did not undermine the reliability of the affidavit of probable cause. There was no error on the part of Morris' counsel in not pursuing this issue at the second trial and no evidence of any prejudice to Morris with respect to this claim.

(7) Morris' third claim is based upon his contention that his counsel in his second trial should have presented evidence showing that his counsel in his first trial improperly failed to move for a mistrial on the ground of prosecutorial misconduct due to "collusion" with the prosecutor. There is no factual support in the record for this claim. We find no error on the part of Morris' counsel in not pursuing this issue at the second trial and no evidence of any prejudice to Morris with respect to this claim.

(8) Morris' fourth claim that his counsel failed to object to impermissibly suggestive techniques by the State to elicit his in-court identification is without any factual basis. The record reflects that, at trial,

Morris was identified by the victim and another eyewitness to the attack. There is no evidence that the State engaged in any improperly suggestive acts that would have tainted these identifications. Because Morris has failed to show that any error on the part of his counsel resulted in prejudice to him with respect to this claim, it, too, must fail.

(9) Morris' fifth claim is that his counsel failed to object to the trial judge's improper jury instructions, in particular the instruction that a police officer may effect an arrest for a felony without an arrest warrant. Given the overwhelming evidence identifying Morris as the attacker, we find that Morris has failed to demonstrate that, even if the instruction had not been given, the outcome of the trial would have been any different.

(10) As his sixth claim, Morris argues that his counsel improperly failed to object to the State's expert's testimony regarding the results of fingerprint testing on the PVC pipe that was used in the attack. Specifically, Morris argues that, because the State did not disclose the opinion of its fingerprint expert prior to his first trial, the defense was not able to have the pipe tested by its own expert. The record reflects, however, that at Morris' first trial the State's expert testified that he was not able to lift any fingerprints from the pipe. There was no reason for Morris' counsel to object to that testimony, since it was favorable to Morris. Because Morris

can show no error on the part of his counsel that resulted in prejudice to him, this claim also must fail.

(11) Morris next claims that his counsel failed to object to false testimony given by an expert witness for the State. Specifically, he argues that the victim's eye doctor lied about the victim's vision in order to explain why he was unable to identify Morris at the first trial, but was able to identify him at the second trial. The record reflects that there was a discrepancy between the eye doctor's testimony at the first trial and his testimony at the second trial. However, because the victim himself testified that the vision in his left eye, which was impaired as a result of the attack, had improved since the first trial, the eye doctor's testimony was not needed in order to explain why the victim was now able to identify Morris in court. Morris has not demonstrated that any error on the part of his counsel resulted in prejudice to him with respect to this claim.

(12) Morris' final claim is that his counsel had a conflict of interest that compromised his ability to provide zealous representation. The record reflects that Morris accused his counsel of lying to him, which resulted in the trial judge clearing the courtroom and admonishing Morris and his counsel to be respectful to each other. There is nothing in the record, however, to suggest that an actual conflict of interest existed. Nor is there

any evidence in the record to suggest that any action taken by Morris' counsel resulted in any prejudice to him. We find Morris' claim of a conflict of interest on the part of his counsel that negatively affected the outcome of the trial to be without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice